

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN WILLIAM CRISMORE**, on March 2, 2001 at 3:00 P.M., in Room 317-C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. William Crismore, Chairman (R)  
Sen. Dale Mahlum, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Mack Cole (R)  
Sen. Lorents Grosfield (R)  
Sen. Ken Miller (R)  
Sen. Glenn Roush (D)  
Sen. Bill Tash (R)  
Sen. Mike Taylor (R)  
Sen. Ken Toole (D)

**Members Excused:** Sen. Bea McCarthy (D)

**Members Absent:** None.

**Staff Present:** Nancy Bleck, Committee Secretary  
Mary Vandembosch, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 118, HB 147, HB 46,  
2/20/2001  
Executive Action: HB 129 , HB 118

#### **HEARING ON HB 118**

**Sponsor:** REP. GILDA CLANCY (R), HD 51, Helena

**Proponents:** Art Compton, Administrator, Planning, Prevention and Assistance Division, Montana Department Of Environmental Quality

**Bob Gilbert, National Federation of Independent  
Business**

**Opponents:**       None.

**Opening Statement by Sponsor:**

**REP. GILDA CLANCY, HD 51, Helena**, opened by saying that **HB 118** came by the request of the Department of Environmental Quality. It was a bill for an act revising the Clean Air Act of Montana. As a background, the Clean Air Act of Montana sets the policy of the state to achieve and maintain clean air quality in Montana. In many cases, this act followed the federal clean air act and provided the DEQ the authority to implement under federal laws. The DEQ requested this proposed legislation to take care of two out-dated items. The first related to the physical location of the position that was responsible for assisting small businesses to understand and comply with state and federal clean air acts. This service was an important one to small businesses and had been offered by the DEQ since 1995. **HB 118** would amend the Clean Air Act of Montana to allow the position of the small business stationary source representative in the Planning, Prevention and Assistance Division of the DEQ where it was currently at, to be located within a non-regulatory program of the Department of Environmental Quality. This bill also would remove a requirement that the department act on operating permit applications by November 15, 1997, as that date had passed. This bill was amended in the House, at her request, to further protect small businesses. This amendment would restrict the small business stationary source representative from sharing information that he or she finds while providing technical assistance to the small business with other parts of the DEQ for use in any administrative or judicial enforcement action. This amendment was requested by the small business representatives and was supported by the DEQ. **REP. CLANCY** stated that the DEQ would provide more specific information regarding this legislation. To note, this bill would amend sections 75-2-109 and 75-2-218 of the Montana codes and would be effective immediately.

**Proponents' Testimony:**

**Art Compton, Administrator, Planning, Prevention and Assistance Division, Montana Department of Environmental Quality (DEQ)**, stated **HB 118** was designed to get us into compliance with state law. They found out from an audit that the state government had the small business stationary source representative, the position that was responsible for helping small business owners stay in compliance with air quality regulations, in the wrong location according to law. When state agencies were reorganized in 1995,

this position came over from the Department of Health and Environmental Sciences. In that it was a compliance assistance position, the DEQ felt that it best fit in the Planning Division, which was a non-regulatory arm of the DEQ. This was where all the technical and financial assistance programs were located. The DEQ found out through the audit that there was a state law saying that this small business ombudsman could not be located in a regulatory agency. The DEQ felt that it made sense to have the position at the DEQ and that was why **HB 118** was proposed. The DEQ could have simply moved the position over to the Department of Commerce. The reason they thought this position was a good fit in the non-regulatory arm of the DEQ was that they had found that small business owners were willing to work with them, that they were open to the DEQ's suggestions and guidance on ways to comply with Montana's air quality laws. The DEQ had also found an additional advantage in having the position located in the department, that being they could essentially walk the small business owners downstairs, and introduce them to a member of the Permitting Division to continue compliance assistance. To date, the DEQ had not had a small business owner that had worked with their Compliance Assistance Program run afoul with this process. Rather than move the position to come into compliance with state law, the DEQ opted to ask **REP. CLANCY** to carry **HB 118** for the department, thinking that the DEQ's experience in having the position in the DEQ but having it in a non-regulatory area of the DEQ had been very successful in keeping small business owners in compliance with the air quality laws.

**Bob Gilbert, National Federation of Independent Business (NFIB)**, stood in strong support of **HB 118** on behalf of his group's nearly 8,000 members in the state, all of whom were owners of small businesses. They especially supported the part of the bill that stated that the small business stationary source representative may not provide information to the regulatory arm of the DEQ. They supported this portion because the small business owner really needed the education to help people get into compliance and then the regulatory arm could come in later and do their own perspectives. It was a good bill and NFIB highly endorsed it.

**Questions from Committee Members and Responses:** **SEN. KEN TOOLE**

asked if all the new language was number three in the bill or whether the whole piece of legislation was new. **REP. CLANCY** stated that on page one, lines 16 and 17, there was some new language that addressed the issue of the location of the position being discussed. On page two, lines 16 through 20, the restriction was added regarding the representative not providing information obtained from a small business to the department for use in any administrative or judicial action relating to enforcement. She added that the only change was striking the

permitting deadline date covered in page three, lines 15 through 17. **SEN. TOOLE** asked whether it was state requirements or federal requirements that specified the location of the position. **Art Compton** responded that the requirement was state law. **SEN. TOOLE** stated it seemed very unusual to him to put into statute that a state employee could not disclose information and that it could be a violation of the law if the employee did. He understood what **HB 118** was trying to do and he wondered if that part was in anyway related to the Department of Agriculture's federal law. **Mr. Compton** responded that the reason this amended language would work was that the on page two, line 18 through 20 it stated "unless the information disclosed a violation that constitutes an imminent and substantial danger to human health, safety, or the environment." The DEQ believed that in a case where there was actually some imminent matter that could cause an impact to human health, it was a duty that the DEQ had a means of taking care of. In fact, if this individual found that a situation like that existed, they would address it with an enforcement request. **SEN. TOOLE** asked if the DEQ's lawyers looked at this proposed legislation. **Mr. Compton** responded that the Legislative Counsel of the Legislative Services Division worked with the DEQ in drafting this bill and received legal review. **SEN. TOOLE** stated he was uncomfortable with that language being part of the statutes and asked **Mary Vandebosch, Legislative Branch Staffer**, for feedback. **Ms. Vandebosch** clarified that the bill itself went through legal review, the amendment would not go through legal review. She added that there were some constitutional issues with the language, particular to Article II, Section 9, of the Montana Constitution. There may be an issue with the "clean and healthful environment" provision. The reason that there should be concern about this language was that it seemed to say that if someone requested a document like that, that this small business stationary source representative could not provide the document. On the other hand, if this language was trying to say that, for example, this person goes to a facility and observes something, he was not supposed to get on the phone and report it. As you know, rights are balanced, and in this case, she was not sure where the argument would be. **SEN. MIKE TAYLOR** asked for clarification regarding the bill "providing an immediate effective date" and asked if the DEQ was going to have to move this person if this bill passed and was the position still going to stay within the DEQ. **Mr. Compton** replied that the individual would not be moved as she would stay right where she was located now. **SEN. VICKI COCCHIARELLA** asked for examples of the small business stationary source. **Mr. Compton** responded that these sources could be anyone from a auto body shop with specific state and federal air quality responsibilities in controlling solvents, any small business that handled paints, dry cleaners, or any kinds of businesses that

handled solvents or such that had specific responsibilities under state and federal law. **SEN. BILL TASH** asked if the small business stationary source representative would be an individual from industry or from the department. **Mr. Compton** responded that the position was staffed with a person from the DEQ. This position was advertised through outreach efforts that were available for small business assistance and guidance. The small business owners would come in and talk to her as a staffer of the DEQ. **SEN. LORENTS GROSFIELD**

followed up **SEN. TOOLE'S** question about the concern over privacy issues and asked about the importance and inclusion in the House amendment. **Mr. Compton** said the House amendment was brought forth at the request of interested parties. He stated that some of the DEQ's regulated communities represented by professional organizations, such as **Mr. Gilbert's** group, wanted a clearer, explicit statement that there was some confidentiality that went along with dialogue between small business owners and this position. It had never been a problem in the past but supposed it could be and the DEQ was open to articulating that issue more clearly in the bill. **Bob Gilbert** responded that there was concern that an individual would come for this position in the DEQ to teach the small business source how to get into compliance and give guidance along the steps no matter what type of small business. The concern was that if that person then went back to the regulatory arm of the DEQ and shared information about some minor infractions noted while teaching these people, then the regulatory arm could cite these minor infractions. He contended that where the bill referred to information disclosure regarding "imminent" safety and health, it took care of any major infractions which should be reported immediately. The concern was to put into law language that said information regarding minor things which could be corrected with assistance during the instructional period would not be shared with the regulatory arm and subject the small business owner to being cited or fined while trying to learn how to do the right thing. **SEN. GROSFIELD** commented that putting a state employee in the position of having to grapple with trying to decide whether or not to respond to some member of the public that comes in and wants to know what was going on, would put that state employee in a position of having to deal with the privacy clause in the Montana Constitution, and that seemed kind of touchy. The privacy clause just spoke about individual privacy and he did not know if that extended to proprietary information. He stated that there was a certain amount of safeguarding proprietary information but did not know if that was the issue here. There was a bit of a constitutional dilemma regarding this legislation. **Mr. Gilbert** expressed concern that more was being read into this than was really in that language regarding privacy issues. He added that what **HB 118** was trying to accomplish was to safeguard an

individual who was coming forward and asking the state to come in and provide information to help in getting their business up to speed and conform to the law. In the event that the state small business source representative noticed some small infractions, they just could not go back to the regulatory arm of the agency and report it resulting in a possible citation. If there were infractions that constituted an imminent and substantial danger to human health, safety or environment, the state employee would be required to report those infractions. **Mr. Gilbert** did not think there was a privacy issue with this legislation that was about the public coming in to obtain information but rather addressed the state employee reporting small infractions, while assisting the small business with instructions, that really did not constitute much. **HB 118** was a small business protection act and encouraged small businesses to request help. If the provision safeguarding small business was not provided, then there would be people afraid of asking for help resulting in more businesses in non-compliance. The government's job was to give assistance and not to create harassment or cause citations to be issued. **SEN. KEN MILLER** stated that this discussion was quite similar to the discussion of the self-audit issue and he wondered if that could be used with this legislation. **Mary Vandenbosch** stated at one time there was a provision relating to the issue. **CHAIRMAN CRISMORE** stated that this amendment had brought up a lot of conversation about the whole bill regarding whether it was written well or whether it violated the constitution. He asked **Jan Sensibaugh** whether the DEQ had any of their attorneys look at and if she had a chance to study the amendment. **Ms. Sensibaugh** responded that she had not personally studied the amendment. **Mr. Art Compton** reported that **Mr. John North, Chief Legal Counsel with the Legal Unit of the Board of Environmental Review at DEQ** did review the amendment. **Mr. Compton** thought he used the term "confidentiality" too loosely in responding to **SEN. GROSFIELD'S** question. **Mr. Compton** added that nothing was locked up and no padlocks were secured and anyone requesting information from the DEQ regarding a specific case had access to the information as there was no confidentiality or protection from requests from people outside of the agency. This bill prevented only the one staff member as the "small business stationary source representative" from running downstairs to the Enforcement Division with information that she had learned through her dialogue with small business unless it posed an imminent threat to public health.

**Closing by Sponsor:**

**REP. CLANCY** closed by saying that it should be kept in mind that this person in this position did help small businesses come into compliance with the air quality act. She thought the source

representative was a position that was much needed. She added that information was still open to the public, however, the information could not be used for fines or a type of policing and could not be given to the regulatory side of the DEQ. She urged passage of **HB 118** and added that **SEN. MACK COLE** was prepared to carry this on the Senate floor. **CHAIRMAN CRISMORE** closed the hearing on **HB 118**.

*{Tape : 1; Side : A; Approx. Time Counter : 0 - 28.7}*

#### HEARING ON HB 147

Sponsor: **REP. RICK DALE (R), HD 39, Whitehall**

Proponents:     **Jan Sensibaugh, Director, Montana Department of  
                          Environmental Quality  
                          Jim Mockler, Executive Director, Montana Coal  
                          Council  
                          Anne Hedges, Montana Environmental Information  
                          Center**

Opponents:       **None.**

#### Opening Statement by Sponsor:

**REP. RICK DALE, HD 39, Whitehall**, opened by saying that **HB 147** related to the Montana Strip and Underground Mine Reclamation Act which was an act that applied only to the mining of coal. The purpose of this proposed legislation was to clarify and define the process by which a permit was applied for, an environmental impact statement (EIS) was completed, and a decision was made on the issue of findings by the Montana Department of Environmental Quality and a subsequent record of the decision was issued. The way things were currently set up, a company could submit a permit application that might have, in fact, addressed the requirements of each part of the law and been eligible to be declared administratively complete but, perhaps, lacked some specific detail of information that the contractor doing the EIS needed in order to complete the EIS. Therefore, because there was a legal limit in current law that an EIS must be completed within 365 days, if a company was not diligent in submitting that information or there were several rounds of efficiency letters, perhaps, the DEQ would find itself in the position of having its 365 day limit expire and would have to issue a final EIS without having the adequate or complete information. Therefore, the EIS would be subject to question and possible challenge. The intent of the DEQ was to create the wording in legislation that would require the completion of the EIS 15 days prior to the DEQ's

written findings either granting or denying the permit. In that way, the written findings would be prepared no later than 45 days from a second very important date in the sequence which was the date of susceptibility and that was a completely different set of standards than administrative completeness. The effort and the purpose was put in to make the process more explainable, work more smoothly, and if the person who was filing for the permit was diligent in presenting their information, they would receive a permit decision more quickly.

**Proponents' Testimony:**

**Jan Sensibaugh, Director, Montana Department of Environmental Quality,** supported **HB 147** and provided written testimony, **EXHIBIT (nas48a01)**.

**Jim Mockler, Executive Director, Montana Coal Council,** stated he surprised himself that he was testifying for a bill that conceivably could extend the time of their EIS and their whole permitting process. However, the way the real world worked was that this legislation would streamline the process. He thought this legislation would provide for a better and more understandable process and he supported **HB 147**.

**Anne Hedges, Montana Environmental Information Center,** stood in support of **HB 147** and stated that she thought this bill was a good idea. She stated this was actually how **SEN. DUANE GRIMES'** bill should have been drafted because she thought it made a lot of sense. She had one small concern relating to how MEPA fit in with the whole permitting process. **Ms. Hedges** explained that right now, according to this bill, an application was determined to be acceptable, which would be day one. On day 30, a final EIS had to be issued. On day 45, a permit had to be issued. **Ms. Hedges** was unclear when the drafting of the EIS would be done and was concerned about time being allowed for public comment. If the EIS was drafted before determining the application was acceptable, the public was taking it on faith, that what they were commenting on was actually an application. **Ms. Hedges** stated the need to have about a 30 day period for the public to comment on these issues and in order to provide that, it would take it back to day one when the application was determined to be acceptable, raising concern over when the draft EIS would be done. She recommended that the time frames be juggled so that, at the very least, the public comment period for the draft EIS would be overlapping with when the DEQ determined that an application was acceptable. She thought that this process would force the public to comment on something that was not final and might not provide the information needed for the public to adequately comment on it. **Ms. Hedges** suggested an extension of



the 45 days on page four, line 21, by 15 days changing the time to 60 days. She stated she had spoken to the bill sponsor and the DEQ about the concern that this bill would not allow for adequate comment from the public, and that the DEQ would not have adequate time to review the public comment and incorporate those comments when issuing the final EIS by day 30. **Ms. Hedges** said that this was her only concern with **HB 147** and she otherwise supported this legislation.

**Questions from Committee Members and Responses: SEN. LORENTS**

**GROSFIELD** asked **Jan Sensibaugh** about the extra 15 days that **Ms. Hedges** recommended. **Ms. Sensibaugh** commented that the DEQ looked at that and felt that they could get a complete draft EIS out and if there was public comment that was significant enough, the DEQ would not make the acceptable determination and would start over. However, the DEQ did understand **Ms. Hedges'** concern about allowing the public to comment on all the acceptable information and thought that the additional 15 days still did not extend the time out too long for the industry and did provide the comment period that the public was looking for. **Mr. Mockler** responded that this was the first he had heard of this concern. He thought that the public had the opportunity to examine this process all the way through as it was an open process. His organization had agreed to a whole lot with this legislation including, as **Ms. Sensibaugh** said, going back through and starting the 120 day process over again. He thought the time provided was somehow reasonable but now, to come in at the last minute and add another 15 days, it did not sit well as his people had agreed to the original extension of time and the extension of flexibility. **Mr. Mockler** wanted to take this back to his organization for comment. He also stated that if anyone did not like the decision by the DEQ for the permit or felt mistreated by the DEQ, they could appeal the decision, and that would give them another 80 days before any decisions were made. **Mr. Mockler** stated that there was no time limit sometimes as these permits could take years, and he resisted the amendment.

**Closing by Sponsor:**

**REP. DALE** closed by saying that, as the sponsor of **HB 147**, he could understand the concerns about the public comment period as he knew how important it was to allow full disclosure. He also understood the frustration of the industry and **Mr. Mockler** did work through his membership to come up with support for this bill during its trip through the House. He did a quick calculation regarding the DEQ and the industry and found that if things were done on the most accelerated schedule possible, a final decision could be issued in 255 days, though that was not likely in most cases just because there were considerations. He added that

another 15 days on that same fast track would make it 275 days which was still shorter than a lot of the permits took and would give the department a window to operate in without leaving itself open to criticism. He would leave it to the wisdom of the committee and ask the chairman, perhaps, to wait for **Mr. Mockler** to get some feedback from the people he represented. Overall, this proposed legislation would change the system to make it one that was more understandable. There was still the possibility that a permit could get caught in the loop but it would be because information was needed and not because of unfounded objections. **REP. DALE** urged passage of **HB 147**. **CHAIRMAN CRISMORE** closed the hearing on **HB 147**. {Tape: 1; Side: B; Approx. Time Counter:0-19.4}

#### HEARING ON HB 46

Sponsor: **REP. RICK DALE (R), HD 39, Whitehall**

Proponents:     **Jack Stults, Administrator, Water Resources  
                                Division, Montana Department of Natural  
                                Resources and Conservation  
Robert Throssell, Montana Tech Council  
Rodger Foster, Professional Engineer,  
                                Morrison-Maierle-CSSA, Helena, and member of  
                                Consulting Engineers Council of Montana**

Opponents:       **None.**

#### Opening Statement by Sponsor:

**REP. RICK DALE, HD 39, Whitehall**, presented **HB 46**, a bill for an act increasing the limit for construction contracts without formal competitive bids for state-owned water projects to \$50,000. This would exempt the Department of Natural Resources and Conservation (DNRC) from specific solicitation and selection procedures for contracts up to \$15,000 for goods, non-construction services, or professional services related to state-owned water projects. It would amend section 85-1-219 of the Montana codes and would be effective immediately. **REP. DALE** said that this bill related to the DNRC projects under the responsibility of the Water Resources Division and would only apply to this division of the DNRC. The purpose of this proposed legislation was to enable the Water Resources Division to respond more quickly, respond in the proper season on urgent projects, and to work more effectively with their partners on those projects. Those partners were usually local irrigation districts or organized water usage groups. In many cases, the partners

would allow the Water Resources Division to avoid greater costs by being able to repair structures early in the season before further damage could occur. The existing project amount that authorities were proposing to raise had been in place since 1983, and was not adequate because of inflation and the cost of materials and special services. This proposed legislation would place the Water Resources Division of the DNRC on the same authority level as the Department of Highways, the only other state department that undertook those larger-scaled projects.

**REP. DALE** assured the committee that oversight of the Water Resources Division was continuous and aggressive through the Contractor's Association and the contracting community that generally contended for these projects.

### **Proponents' Testimony:**

**Jack Stults, Administrator, Water Resources Division, Department of Natural Resources and Conservation**, stated that the state of Montana, through the Water Resources Division, owned 29 dams and 300 miles of canals across the state. The canals and dams had a variety of structures on them, and those structures required a variety of activities to maintain, repair, and replace them. The canals and dams served water user associations and irrigation districts across the state and were tied to delivering water for irrigation. There was a very short time frame to repair those during and off-season which could also be constraining, in many cases, by the weather because some of these were located at high elevations. The Water Resources Division had been operating under a dollar amount for contracting services that required a formal bidding process for anything over \$25,000 since the 1980's. Since then, the limit for other agencies had gone to \$50,000 and \$75,000. The Water Resources Division was proposing to raise their limit to \$50,000 just to be consistent, for one reason, so there was less confusion in contracting with the community. Also, there would be less burden on the water users that cost-shared with the division in maintenance of these facilities, such as the problem with the gate and intake structure at Deadman's Basin. During the winter months, the division would like to move quickly in order to be able to prepare that and divert water into Deadman's Basin for water deliveries for the rest of the year. This bill also addressed the division's permit of professional services, such as surveying, divers, soil testing, and concrete testing service.

**HB 46** would make it clear that the division could directly negotiate with those professional services for work under \$15,000. This change would simply reduce the division's formalized processes in order to reduce the costs that would take the burden off of the departments that they cost-shared with and would expedite the needed repairs. **Mr. Stults** said that there

might be an amendment proposed by one of the opponents of the bill that had to do with trying to narrow the focus. **Mr. Stults** appreciated their intention and completely supported the fact that they were trying to support the bill and make it more concise, though he just had not had time to thoroughly review the amendment, just received within the last hour, or study the language in order to share his point on that amendment.

**Robert Throssell, Montana Technical Council**, stated that his council was made up of design professionals, engineers, architects and surveyors in the state. They supported **HB 46** for the reasons that the sponsor already discussed regarding the types of projects involved and dollar limits that really needed to be adjusted. **Mr. Throssell** stated that, as **Mr. Stults** had indicated, the Montana Tech Council did have concerns in the way services of engineers, surveyors or other licensed professionals were obtained. Currently in law in Title XVIII, the state had set forth the provisions of a qualification-based selection system for these professionals. It had an exemption in it already for projects of \$10,000. The exemption proposed by the DNRC to move it to \$15,000 for their projects was fine. **Mr. Throssell** stated that the Tech Council would like to see a change to the selection process now in statute in 18-8-212, copy of the statute provided as **EXHIBIT (nas48a02)**. They suggested amending the bill on page two, lines 13, by striking "The provisions of Title 18, chapter 8, part 2, do not", and inserting "The provisions of 18-8-212, except as to the amount of the fees". A copy of this proposed amendment was provided as **EXHIBIT (nas48a03)**. The Tech Council believed that this amendment would clarify and give the department the authority to go and hire whatever professional they needed to do the job and tied this procedure to water projects in the existing state statute for the hiring of professionals that other state agencies used. **Mr. Throssell** supported **HB 46** with this amendment.

**Rodger Foster, professional engineer, Morrison-Maierle-CSSA, Helena, and member of the Consulting Engineers Council of Montana**, expressed total support of **HB 46** in its intent to allow the Water Resources Division of the DNRC to be more functional and avoid going through the cumbersome process with construction services or going through a selection process for engineers for projects under \$15,000. He supported this measure with the amendment. **Mr. Foster** thought it would be better to amend the bill and address raising the limit from \$10,000 to \$15,000. He stated that the policy to eliminate the whole section of law was a very broad approach, not necessary, not good policy in this situation and could complicate issues later when there were conflicting laws addressing the same situation. **Mr. Foster** was concerned about a portion of the law that would be eliminated

without the amendment, 18-8-212, which addressed the issue of separating a project into several small pieces to be under the \$15,000 limit. **Mr. Foster** supported **HB 46 with the amendment.**

**{Tape : 1; Side : B; Approx. Time Counter : 19.4 - 33.5}**

**{Tape : 2; Side : A; Approx. Time Counter : 0 - 0.3}**

**Questions from Committee Members and Responses:**

**SEN. LORENTS GROSFIELD** wondered about the focus on page two, lines 13 and 14, when lines 11 and 12 would eliminate the whole chapter (4), Title 18, which contained a lot of requirements including the ability to go in and remove or suspend a vendor being just one example. He did not understand that intention and questioned why this bill was drafted in this manner without just changing 18-8-212, and wondered if that was because it applied to all state procurement and not just water. **Jack Stults** agreed and stated that the statutes being addressed in this bill were entirely specific to the state's water projects. They were adopted in the early 1980's and did govern specifically the contracting for the state's water projects. The DNRC's intent was trying to just target those projects without implicating other statutes and provisions of contracting that other agencies had to follow. **SEN. GROSFIELD** asked **Mr. Stults** to look at lines 11 and 12 of the bill and asked about the DNRC's intent in proposing that portion. **Mr. Stults** replied that all of the provisions in the other chapters would not apply to the contracting of water projects, if the projects were under \$15,000 and this would just make it explicit. **SEN. GROSFIELD** presumed that the DNRC's contract would contain provisions regarding due-diligence and that sort of thing and so if there was not due-diligence, the DNRC could probably get out of the contract. **SEN. GROSFIELD** recommended that the suggested amendments be reviewed by the DNRC's legal counsel. **Mr. Stults** stated that was what they intended to do and he concurred with the idea, and just needed more time to review the suggested amendment. **SEN. MIKE TAYLOR** wondered why the limit was dropped from \$75,000 to \$50,000 in the title. **Mr. Stults** reported that the DNRC began the process with the bill draft stating \$75,000, which was consistent with the bidding limit in the statutes for the Department of Administration with their building contracts. The Department of Transportation (MDT) had a \$50,000 limit. When the bill came to the House, the Montana Contractors' Association, who had been in discussions about this bill since summer, said that they would feel more comfortable if the bill contained the same limit that the MDT had which was \$50,000. The DNRC also worked closely with the Montana Technical Council and all their membership and felt that if it was truly a concern of theirs and they could not be comfortable with the bill without making the limit in the title consistent with the MDT, then the DNRC would go along with that

suggestion. **SEN. TAYLOR** stated that with the rising costs, the lower amount really limited the effect of the bill. **Mr. Stults** said that was true but it still was very beneficial to their purpose.

**Closing by Sponsor:**

**REP. DALE** closed by saying that, in working with the DNRC's Water Resources Division, he found them to be a very cost-conscious department. They worked well with their partners who were large water resource groups and the irrigation districts. **REP. DALE** said that most companies would envy the percentage of professionals and engineers the division had maintained within their own staff. The division did, sometimes, have to look for outside services because they did have some very large projects, but on many of these projects the division had won awards for completing projects ahead of schedule and under cost. In regards to the question and concern with the \$75,000 amount, he thought that was a valid point but agreed with the suggestion for the amount in the bill because everybody felt more comfortable with that. **REP. DALE** urged support and passage of **HB 46**.

**CHAIRMAN CRISMORE** closed the hearing on **HB 46**.

*{Tape : 2; Side : A; Approx. Time Counter : 0.3 - 8.5}*

**EXECUTIVE ACTION ON HB 129**

**Mary Vandenbosch**, legislative staffer, offered **EXHIBIT(nas48a04)**, Montana's Basin Closures and Controlled Groundwater Areas that related to **HB 129**.

**Motion:** **SEN. GROSFIELD** moved that **AMENDMENTS TO HB 129 (HB012903.amv)**, **EXHIBIT(nas48a05)**, BE ADOPTED.

**Discussion:** **SEN. GROSFIELD** explained the amendments and stated his concern that there were some controlled groundwater areas where they would not restrict this sort of a change and he did not think we wanted to discourage that in those areas. The amendments addressed that issue, referencing amendments numbered one, two, five, seven and eight. The other amendments numbered three, six, and nine were explained by **Mr. Stults** in that this process was an exception to a more extensive process as was mentioned in the hearing. The structure that was set up for this amendment was modeled after a structure that the DNRC used for exempt wells and the new wells that were below 35,000 gallons per minute. In that structure, there was a provision that if you did not file a notice within 60 days of completion of a well, then you could be in jeopardy of some kind of penalty. The DNRC had

never exercised that penalty but it did encourage people to file within 60 days. **Mr. Stults** stated that it was pointed out to the DNRC that this provision would have a different effect in this case because if the notice was not filed within 60 days, the stream-lined process could not be used, triggering use of the more extensive process and that did not seem appropriate to the DNRC. As long as the criteria was provided to the DNRC regarding a true replacement well, they felt that this stream-lined process should be available to them. The DNRC was concerned about having a fixed, solid 60 day figure that could trigger use of the old and more extensive process.

**Voice Vote:** The motion that **AMENDMENTS (HB012903.amv) TO HB 129 BE ADOPTED** carried unanimously. Vote was 9-0 with **SEN. COLE** and **SEN. MCCARTHY** excused.

**Motion/Voice Vote:** **SEN. GROSFIELD** moved that **HB 129 BE CONCURRED IN AS AMENDED**. Motion carried unanimously. Vote was 9-0 with **SEN. COLE** and **SEN. MCCARTHY** excused.

**SEN. GROSFIELD** will carry **HB 129** on the Senate floor.  
{Tape : 2; Side : A; Approx. Time Counter : 8.5 - 14.7}

#### **EXECUTIVE ACTION ON HB 118**

**SEN. LORENTS GROSFIELD** stated that the point was made that all we were talking about here was within the agency and if all of the files were always open to the public, they were obviously open to the department too. At first he thought there was possibly a constitutional problem with this bill but now he was not too sure. **SEN. KEN TOOLE** responded that his concern was with the "privacy issue" as he had never seen in statute anywhere a specific prohibition about an agency sharing information internally. The fact of the matter was that this kind of training/enforcement situation was common in state government with human rights, unemployment administering, and labor issues. He had seen agencies working with this exact issue and thought it was strange to put something into the statutes that was telling a state employee not to disclose a violation the employee was aware of.

**Motion:** **SEN. MAHLUM** moved that **HB 118 BE CONCURRED IN**.

**Discussion:** **SEN. VICKI COCCHIARELLA** stated that relative to the discussion or question that **SEN. GROSFIELD** had and with her understanding of what type of businesses these small businesses were, she felt it was a very positive approach and really

benefitted the small business owners. The language at first bothered her and she felt it was not needed, but now she was thinking it was a good thing to have in the bill if it encouraged more voluntary participation and questioning by making businesses feel more secure about asking for help. She did not think that part of the bill would ever be an issue in the future as it had never been in the past. She stated this was one of the most successful programs that the state had for small businesses in Montana and other committee members shared that opinion also.

**SEN. MIKE TAYLOR** referred to the discussion of the constitutionality of this bill and wanted that cleared. **Mary Vandebosch, legislative staffer**, stated the bill would be better if the language were changed that addressed that on page two, line 16, to make it a little clearer and offered to work on that concept and the committee agreed to vote on that concept for amendment.

**Substitute Motion/Voice Vote:** **SEN. COCCHIARELLA** moved that **AMENDMENTS TO HB 118 BE ADOPTED. Motion carried unanimously. Vote was 9-0** with **SEN. COLE** and **SEN. MCCARTHY** excused. Reference **EXHIBIT** (nas48a06), (HB011801.amv) received March 3, 2001.

**Motion/Voice Vote:** **SEN. MAHLUM** moved that **HB 118 BE CONCURRED IN AS AMENDED. Motion carried unanimously. Vote was 9-0** with **SEN. COLE** and **SEN. MCCARTHY** excused.

**SEN. MACK COLE** will carry **HB 118** on the Senate floor.

**{Tape : 2; Side : A; Approx. Time Counter : 14.5 - 22.7}**



**ADJOURNMENT**

Adjournment: 4:30 P.M.

---

SEN. WILLIAM CRISMORE, Chairman

---

NANCY BLECK, Secretary

WC/NB

**EXHIBIT (nas48aad)**